

## ATTACHMENT NO. 4

### EXHIBIT 11.2.3

#### UNITED STATES WATER QUALITY WAIVER AND RELEASE OF CLAIMS

1. Except as provided in paragraphs 2, 3 and 4, the United States, in consideration of the benefits realized under the Zuni Indian Tribe Water Rights Settlement Agreement in the Little Colorado River Basin, dated June 7, 2002 ("Settlement Agreement"), and in accordance with the commitments under paragraph 11.2.3 of the Settlement Agreement and pursuant to the authorization granted in section 7 of the Zuni Indian Tribe Water Rights Settlement Act of 2003 ("the Act"), hereby waives and releases claims against the State of Arizona, or any agency or political subdivision of the State of Arizona, or any other person, entity, corporation, or municipal corporation, under Federal, State, or other law for:

- A. All past and present common law claims accruing from time immemorial through the Enforcement Date (as the Enforcement Date is defined in the Settlement Agreement) arising from or relating to water quality in which the injury asserted is to the Tribe's interest in water, trust land, and natural resources in the LCR basin (as that term is defined in the Settlement Agreement);
- B. All past and present natural resource damage claims accruing through the Enforcement Date arising from or relating to water quality in which the claim is based on injury to natural resources or threat to natural resources in the LCR basin, only for those cases in which the United States, through the Secretary of the Interior or other designated federal official, would act on behalf of the Tribe as a natural resource trustee pursuant to the National Contingency Plan, as set forth, as of the date of enactment of the Zuni Indian Tribe Water Rights Settlement Act of 2003, in section 300.600(b)(2) of title 40, Code of Federal Regulations;
- C. All future common law claims arising from or relating to water quality in which the injury or threat of injury asserted is to the Tribe's interest in water, trust land, and natural resources in the Eastern LCR basin (as that term is defined in the Settlement Agreement) accruing after the Enforcement Date caused by:
  - (1) The lawful diversion or use of surface water;
  - (2) The lawful withdrawal or use of underground water, except within the Zuni Protection Area as provided in Article 5 of the Settlement Agreement;
  - (3) The Parties' performance of any obligations under the Settlement Agreement;
  - (4) The discharge of oil (as oil is defined in the Settlement Agreement) associated with routine physical or mechanical maintenance of wells or diversion structures not inconsistent with applicable law;

- (5) The discharge of oil associated with routine start-up and operation of well pumps not inconsistent with applicable law; or
- (6) Any combination of the causes described in subparagraphs (1) through (5); and

D. All future natural resource damage claims accruing after the Enforcement Date arising from or relating to water quality in which the claim is based on injury to natural resources or threat to natural resources in the Eastern LCR basin, only for those cases in which the United States, through the Secretary of the Interior or other designated Federal official, would act on behalf of the Tribe as a natural resource trustee pursuant to the National Contingency Plan, as set forth, as of the date of enactment of the Zuni Indian Tribe Water Rights Settlement Act of 2003, in section 300.600(b)(2) of title 40, Code of Federal Regulations, caused by:

- (1) The lawful diversion or use of surface water;
- (2) The lawful withdrawal or use of underground water, except within the Zuni Protection Area as provided in Article 5 of the Settlement Agreement;
- (3) The Parties' performance of their obligations under the Settlement Agreement;
- (4) The discharge of oil associated with routine physical or mechanical maintenance of wells or diversion structures not inconsistent with applicable law;
- (5) The discharge of oil associated with routine start-up and operation of well pumps not inconsistent with applicable law; or
- (6) Any combination of the causes described in subparagraphs (1) through (5).

2. Notwithstanding the execution by the United States of this Waiver and Release of Claims, the United States shall retain the right to assert, as provided in paragraph 11.4.B of the Settlement Agreement, the following claims:

- A. Claims for breach or enforcement of the terms of this Settlement Agreement or of rights recognized in this Settlement Agreement or in the Act, including claims for future injuries to such rights;
- B. Claims for injuries to surface water, groundwater and water quality as provided in Article 5 of the Settlement Agreement; and
- C. Claims for future injuries to water quality, as described below:
  - (1) Claims accruing after the Enforcement Date for injuries to water quality that are not waived in subparagraphs 1.C and D; and

(2) Claims brought at the request of the Tribe pursuant to subparagraphs 11.4.A(4)(c) and (d) of the Settlement Agreement.

3. Nothing in this Waiver and Release of Claims quantifies or otherwise affects the water rights, claims, or entitlements to water for federal lands of federal agencies, or of any Indian tribe, band, or community, other than the Zuni Tribe. Furthermore, nothing in this Waiver and Release of Claims waives the ability of any federal agency, Indian tribe, band or community, or the United States on their behalf, to enforce or otherwise protect those water rights, claims or entitlements to the extent permitted by law. The United States retains all claims of water rights or injuries to water rights or water quality (including water rights in groundwater, surface water, and effluent) against any other Indian tribe, band or community.

4. Except as provided in paragraph 1, nothing in this Waiver and Release of Claims affects any right of the United States or the State of Arizona to take any actions, including enforcement actions, under any laws (including regulations) relating to human health, safety and the environment.

5. For purposes of this Waiver and Release of Claims, a claim or cause of action accrues when any party knows or reasonably should know that it has been damaged, unless another statutory standard applies.

6. Nothing in this Waiver and Release of Claims prevents the United States from participating with other entities in further activities to augment the water supply available to the LCR basin.

7. This Waiver and Release of Claims becomes effective and enforceable on the Enforcement Date.

DATED THIS 8<sup>th</sup> DAY OF July, 2004

THE UNITED STATES OF AMERICA  
SECRETARY OF THE INTERIOR

By: 